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OFFICE OF PETITIONS

PTO/SB/64 (11-03)

Approved for use through 07/31/2006. OMB 0651-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED  
UNINTENTIONALLY UNDER 37 CFR 1.137(b)

Docket Number (Optional)

First named inventor:

Fazal Syed Raheman

Application No.:

09/542,392

Art Unit:

Filed:

April 4, 2000

Examiner:

Title:

Method and System of Creating Floating Window For  
Display Sponsor Information, Messages or Programs in non-  
obtrusive Areas of the Graphic User  
Interface of A Software Application

Attention: Office of Petitions

Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

FAX: (703) 872-9306

NOTE: If information or assistance is needed in completing this form, please contact Petitions  
Information at (703) 305-9282.

The above-identified application became abandoned for failure to file a timely and proper reply to a  
notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the  
expiration date of the period set for reply in the Office notice or action plus an extensions of time  
actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee --required for all utility and plant applications  
filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

1. Petition fee

☒ Small entity-fee \$ 665.00 (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.

☐ Other than small entity - fee \$ \_\_\_\_\_ (37 CFR 1.17(m))

2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in

the form of \_\_\_\_\_ (identify type of reply):

☒ has been filed previously on May 13th 2004

☐ is enclosed herewith.

B. The issue fee of \$ \_\_\_\_\_

N/A applicable

☐ has been paid previously on \_\_\_\_\_

☐ is enclosed herewith.

[Page 1 of 2]

This collection of information is required by 37 CFR 1.137. The information is required to obtain or retain a benefit by the public which is to file (and by the  
USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1.0 hour to complete,  
including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments  
on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent  
and Trademark Office, U.S. Department of Commerce, P.O. 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS  
ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

665.00 DP

665.00 DP

07/02/2004 WABDELRI 00000101 09542392

01 FC:2453

07/02/2004 WABDELRI 00000101 09542392

01 FC:2453



Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

### 3. Terminal disclaimer with disclaimer fee

- ☐ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- ☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ \_\_\_\_\_ for a small entity or \$ \_\_\_\_\_ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE. The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D))].

**WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.**

6/21/04  
Date

[Signature]  
Signature

Telephone Number: 508-883-4722

Typed or printed name

Fazal Raheman  
Address  
40 Donald Mossman  
30 Liberty Hill Dr  
Address

Enclosures: ☒ Fee Payment

☒ Reply

☐ Terminal Disclaimer Form

☐ Additional sheets containing statements establishing unintentional delay

☐ Other: \_\_\_\_\_

Blackstone, MA 01504

### CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

I hereby certify that this correspondence is being:

☒ deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

☐ transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (703) 872-9306.

6/21/04  
Date

[Signature]  
Signature

FAZAL RAHEMAN

Type or printed name of person signing certificate



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of :	Fazai Syed Raheman	<b>RECEIVED</b>
Serial No.:	09/542,392	
Filing Date:	April 4, 2000	JUL 0 8 2004
Group Art Unit:	2173	
Attorney Docket No.:	067695.0105	<b>OFFICE OF PETITIONS</b>
Examiner:	Raymond J. Bayerl	
Title :	METHOD AND SYSTEM OF CREATING FLOATING WINDOWS FOR DISPLAYING SPONSOR INFORMATION, MESSAGES OR PROGRAMS IN NON- OBTRUSIVE AREAS OF THE GRAPHIC USER INTERFACE OF A SOFTWARE APPLICATION	

HONORABLE ASSISTANT COMMISSIONER  
FOR PATENTS  
Washington, DC 20231

Dear Sir,

This is in reference to the office action dated June 9, 2004, dismissing my petition under 37 CFR 1.137(a) to revive the above captioned application. In the petition I had pleaded unavoidable and unusual circumstances leading to the abandonment. The office action however ruled, "while the circumstances - - - were unfortunate, they do not rise to the level of unavoidable delay". For the reasons and circumstances already pleaded on the record, I herein renew my petition for revival under 37 CFR 1.137(b), and submit the prescribed filing fee of \$665 with the application. The response to the last office action is already on record.

I therefore respectfully pray for revival of my aforementioned patent application.

Sincerely yours,

Fazal Raheman

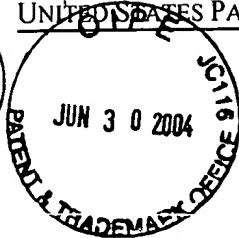
June 21, 2004

- Encl. 1. Petition For Revival Of An Application For Patent Abandoned Unintentionally Under 37 CFR 1.137(b)  
2. Check for \$665.00

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- (1) The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
- (2) A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- (3) A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- (4) A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- (5) A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- (6) A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- (7) A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- (8) A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
- (9) A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



Paper No. 13

Fazal Raheman  
c/o Don Mossman  
30 Liberty Hill Drive  
Blackstone MA 01504

COPY MAILED

JUN 09 2004

In re Application of :  
Fazal Raheman :  
Application No. 09/542,392 :  
Filed: April 4, 2000 :  
Attorney's Docket No. 067695.0105 :

OFFICE OF PETITIONS  
ON PETITION

This is a decision on the petition under 37 CFR 1.137(a), filed on May 13, 2004, under 37 CFR 1.137(a) to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(a)" or, as described below, under 37 CFR 1.137(b). This is not a final agency decision.

The application became abandoned on December 1, 2002, for failure to file a timely response to the Office action mailed on October 30, 2002, which set a one (1) month shortened statutory period for reply. A Notice of Abandonment was mailed on May 5, 2003.

A grantable petition to revive an abandoned application under 37 CFR 1.137(a) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof;

(2) the petition fee as set forth in § 1.17(1);

(3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable; and

(4) any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (c) of this section.

This petition lacks item (3), above.

Decisions on reviving abandoned applications on the basis of "unavoidable" delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable:

The word 'unavoidable' . . . is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.<sup>1</sup>

In the present petition, petitioner asserts that neither the status of the application nor the nature of the Office action were accessible to him at any time during the due date for reply. Petitioner explains that he was incarcerated from July 9, 2001 to April 16, 2004. Petitioner states that the law firm of Baker and Botts prosecuted the present application since June of 2000. However, due to his incarceration, petitioner states that his overseas company went out of business leaving no contact

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<sup>1</sup>In re Mattullath, 38 App. D.C. 497, 514-15 (1912) (quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 USPQ 666, 167-68 (D.D.C. 1963), aff'd, 143 USPQ 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913). In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). Finally, a petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was "unavoidable." Haines v. Quiqq, 673 F. Supp. 314, 316-17, 5 USPQ2d 1130, 1131-32 (N.D. Ind. 1987).

information for the law firm. In December of 2003, petitioner requested that his friend, Don Mossman, obtain a copy of the entire file from the law firm on his behalf. Petitioner states that on or about May 3, 2004, he received a complete set of paperwork pertaining to the present application from Mr. Mossman. Lastly, petitioner asserts that due to circumstances beyond his control, there was no conceivable way that he could have responded to the nonfinal Office action at any time prior to the filing of the present petition.

The showing of record has been considered, but is not persuasive. Initially, the Office notes that petitioner is ultimately responsible for the prosecution of his application.<sup>2</sup> Petitioner stated that due to his company going out of business, Baker and Botts had no contact information for petitioner. Petitioner should have attempted to contact the law firm and provide them with a correspondence address so that the firm could communicate with petitioner concerning the prosecution of the application. Additionally, petitioner could have communicated directly with the USPTO requesting the status of his application.

It appears from the petition that petitioner did not have any communication with Baker and Botts since approximately July of 2001. However, petitioner waited until May 13, 2004, to change his correspondence address and revoke power of attorney to Baker and Botts. Petitioner could have filed a change of correspondence address with the USPTO to have his mail forwarded to his prison address at any time during his incarceration. Accordingly, petitioner has not shown that adequate provisions were made for the careful handling of Office actions in order to ensure a timely response thereto. In any renewed petition, petitioner must show what steps were taken during his period of incarceration to communicate with Baker and Botts or the USPTO with regard to his application.

As to petitioner's reliance on Baker and Botts' representation, the Office records indicate that the law firm retained power of attorney until it was revoked by petitioner on May 13, 2004. Unfortunately, the USPTO must rely on the actions or inactions of duly authorized and voluntarily chosen representatives of the applicant, and the applicant is bound by the consequences of those actions or inactions.<sup>3</sup> Specifically, petitioner's delay caused by the mistakes or negligence of his voluntarily chosen

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<sup>2</sup>See In Re Columbo, Inc., 33 USPQ2d 1530, 1532 (Comm'r Pat. 1994).

<sup>3</sup>Link v. Wabash, 370 U.S. 626, 633-34 (1962).

representative does not constitute unavoidable delay within the meaning of 35 U.S.C. 133 or 37 CFR 1.137(a).<sup>4</sup>

If Baker and Botts was responsible for prosecution of the above-identified application when the reply necessary to avoid abandonment was due, petitioner must include a statement from Baker and Botts as to why action was not taken to prevent the application from becoming abandoned while the application was under the firm's control. Petitioner should send a letter (accompanied by a copy of this decision) to Baker and Botts by registered or certified mail, return receipt requested, indicating to Baker and Botts that the USPTO is requesting its assistance in determining the circumstances surrounding the abandonment of the above-identified application. Such statements should be accompanied by copies of any documents (e.g. correspondence between petitioner and counsel) relevant to the outstanding Office action. In the event that Baker and Botts fails to provide a statement within a period (e.g., within one (1) month) specified in such letter, petitioner should submit a copy of such letter and the return receipt indicating its delivery to the law firm with any renewed petition under 37 CFR 1.137(a).

In summary, while the circumstances surrounding the abandonment of this application and the extended delay in filing the present petition to revive are unfortunate, they do not rise to the level of unavoidable delay. Therefore, the petition is dismissed.

#### ALTERNATIVE VENUE

Petitioner may wish to consider filing a renewed petition under 37 CFR 1.137(b), which provides that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, **unless previously filed**. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a

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<sup>4</sup>Haines v. Quigg, 673 F. Supp. 314, 5 USPQ2d 1130 (D. Ind. 1987); Smith v. Diamond, 209 USPQ 1091 (D.D.C. 1981); Potter v. Dann, 201 USPQ 574 (D.D.C. 1978); Ex parte Murray, 1891 Dec. Comm'r Pat. 130, 131 (Comm'r Pat. 1891).



request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

The filing of a petition under the unintentional standard cannot be intentionally delayed and therefore should be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

Should petitioner decide to file a petition under 37 CFR 1.137(b), the additional petition fee due would be \$665.00 (small entity).

A copy of the form for filing a petition under 37 CFR 1.137(b) to revive an application unintentionally abandoned is enclosed herewith for petitioner's convenience.

Further correspondence with respect to this matter should be addressed as follows:

By mail:           Mail Stop Petition  
                  Commissioner for Patents  
                  P.O. Box 1450  
                  Alexandria, VA 22313-1450

By FAX:           (703) 872-9306  
                  Attn: Office of Petitions

By hand: U.S. Patent and Trademark Office  
220 20<sup>th</sup> Street S.  
Customer Window, Mail Stop Petition  
Crystal Plaza Two, Lobby, Room 1B03  
Arlington, VA 22202

Telephone inquiries concerning this matter may be directed to the undersigned at (703) 306-5589.

*Christina Tartera Donnell*

Christina Tartera Donnell  
Senior Petitions Attorney  
Office of Petitions

Enclosures: Form PTO/SB/64 -  
Privacy Act Notification Form